IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

MARIA CAZORLA	**PLAINTIFF**
VS.	**CIVIL ACTION NO. 3:10-CV-135 DPJ-FKB**
KOCH FOODS OF MISSISSIPPI, LLC and JESSIE ICKOM	**DEFENDANTS**

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT, KOCH FOODS OF MISSISSIPPI, LLC

Defendant, Koch Foods of Mississippi, LLC ("Koch Foods"), files its Answer and Affirmative Defenses to the Complaint of Plaintiff, Maria Cazorla ("Plaintiff") as follows:

FIRST AFFIRMATIVE DEFENSE
FAILURE TO STATE A CLAIM

Plaintiff's Complaint fails to state a claim against Koch Foods upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
PUNITIVE DAMAGES BARRED

Plaintiff's claims for punitive damages are violative of the constitutional safeguards due Koch Foods under the United States and Mississippi Constitutions. Under the circumstances of this case, an award of punitive damages violates the Fifth and Fourteenth Amendments to the United States Constitution and Article 3, §§ 14, 22 and 28 of the Mississippi Constitution.

THIRD AFFIRMATIVE DEFENSE
MITIGATION OF DAMAGES

Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to appropriately mitigate her alleged damages.

FOURTH AFFIRMATIVE DEFENSE
AVOIDANCE OF CONSEQUENCES

Plaintiff failed to take reasonable measures to avoid the consequences alleged to have been caused by Koch Foods.

FIFTH AFFIRMATIVE DEFENSE
LACHES, WAIVER, OR ESTOPPEL

Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver, or estoppel.

SIXTH AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE
LACK OF CAUSATION

Plaintiff's claims are barred, in whole or in part, because Plaintiff's alleged damages, if any, are the result of Plaintiff's own actions or inactions, or the actions or inactions of third parties, such actions or inactions being the sole proximate cause of Plaintiff's alleged damages or, in the alternative, a contributing cause of such alleged damages.

EIGHTH AFFIRMATIVE DEFENSE
INDEPENDENT INTERVENING CAUSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff's damages, if any, were proximately caused by an independent intervening cause, over which Koch Foods had no control, nor the right to control.

NINTH AFFIRMATIVE DEFENSE
FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

Plaintiff's claims are barred, in whole or in part, due to Plaintiff's failure to exhaust her administrative remedies.

TENTH AFFIRMATIVE DEFENSE
COMPARATIVE FAULT

Plaintiff's claims are barred, in whole or in part, by the doctrines of comparative fault and/or comparative negligence. Thus, if Koch Foods was negligent in any manner, which is expressly denied, Plaintiff and/or third parties were also negligent, and Koch Foods is entitled to have the comparative fault of the parties apportioned in accordance with Miss. Code Ann. § 85-5-7.

ELEVENTH AFFIRMATIVE DEFENSE
LEGITIMATE, NON-DISCRIMINATORY REASON

Plaintiff's claims are barred, in whole or in part, because actions taken by Koch Foods with respect to Plaintiff, if any, were taken for legitimate, non-discriminatory reasons.

TWELFTH AFFIRMATIVE DEFENSE
COURSE AND SCOPE OF EMPLOYMENT

To the extent Plaintiff alleges that one or more of Koch Foods employees harassed or discriminated against her or acted in a tortuous and/or vexatious fashion, such conduct, if it occurred, was outside the course and scope of that individual's employment, was not condoned by Koch Foods, and was undertaken without the knowledge or consent of Koch Foods. Accordingly, Koch Foods is not liable for such conduct, if it occurred.

THIRTEENTH AFFIRMATIVE DEFENSE
REMEDIAL MEASURES

Koch Foods exercised reasonable care to prevent and correct any conduct alleged to constitute a hostile work environment, and the Plaintiff failed to take advantage of the preventative or corrective measures provided by Koch Foods.

FOURTEENTH AFFIRMATIVE DEFENSE
PREVENTION OF DISCRIMINATION AND HARASSMENT POLICY

Koch Foods has a well-disseminated and consistently enforced policy against discrimination and harassment, and a reasonable and available procedure to handle complaints of discrimination and harassment. To the extent Plaintiff failed to use, or otherwise misused, such procedures, her claims are barred under the *Ellerth/Faraghar* affirmative defense.

FIFTEENTH AFFIRMATIVE DEFENSE
EXCLUSIVE REMEDY PROCEDURES

Plaintiff's claims are barred, in whole or in part, by the exclusive remedy provisions of the Mississippi Workers' Compensation Act.

SIXTEENTH AFFIRMATIVE DEFENSE
LACK OF FORESEEABILITY

Plaintiff's claims are barred in whole or in part by the doctrine of foreseeability.

ANSWER

Koch Foods responds to the allegations of the Complaint as follows:

PRELIMINARY STATEMENT

1. Koch Foods admits that Plaintiff is a Latina who worked at Koch Foods' slaughter plant in Morton, Mississippi. Koch Foods denies the remaining allegations contained in Paragraph 1 of the Complaint.

2. Koch Foods denies the allegations contained in Paragraph 2 of the Complaint.

3. Koch admits that Plaintiff seeks to bring claims under 42 U.S.C. § 1981 and under Mississippi law. Koch Foods denies the remaining allegations contained in Paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. Koch Foods admits that this Court has jurisdiction over the subject matter of this action.

5. Koch Foods admits that this Court has supplemental jurisdiction over the Plaintiff's state law claims.

6. Koch Foods admits that venue is proper in this district.

PARTIES

7. Koch Foods admits that Plaintiff is a female Latina who worked at Koch Foods' slaughter plant in Morton, Mississippi at certain times. Koch Foods denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. Koch Foods admits that it is a limited liability company organized under the Laws of the State of Mississippi with operations in Scott County, Mississippi. Koch Foods denies the remaining allegations contained in Paragraph 8 of the Complaint.

9. Koch Foods lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint regarding the residency of Defendant, Jesse Ickom ("Ickom"); therefore, those allegations are denied. Koch Foods admits that, at certain times, Ickom was employed with Koch Foods as a supervisor in the debone area at Koch Foods' slaughter plant in Morton, Mississippi. Koch Foods denies the remaining allegations contained in Paragraph 9 of the Complaint.

STATEMENT OF FACTS

10. Koch Foods admits that Plaintiff worked at its slaughter plant in Morton, Mississippi in the debone area. Koch Foods denies the remaining allegations contained in Paragraph 10 of the Complaint.

11. Koch Foods admits that, at certain times, Ickom was employed with Koch Foods as a supervisor in the debone area at Koch Foods' slaughter plant in Morton, Mississippi. Koch Foods denies the remaining allegations contained in Paragraph 11 of the Complaint.

12. Koch Foods admits that Ickom was a supervisor in the debone area at Koch Foods' slaughter plant in Morton, Mississippi. Koch Foods denies the remaining allegations contained in Paragraph 12 of the Complaint.

13. Koch Foods admits that Ickom had certain supervisory duties as a supervisor in debone area. Koch Foods denies the remaining allegations contained in Paragraph 13 of the Complaint.

14. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint regarding the conversations between and actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 14 of the Complaint.

15. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 15 of the Complaint.

16. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint regarding the conversations between and actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 16 of the Complaint.

17. Koch Foods denies the allegations contained in Paragraph 17 of the Complaint.

18. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 18 of the Complaint.

19. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 19 of the Complaint.

20. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 20 of the Complaint.

21. Koch Foods denies the allegations contained in Paragraph 21 of the Complaint.

22. Koch Foods denies the allegations contained in Paragraph 22 of the Complaint.

23. Koch Foods denies the allegations contained in Paragraph 23 of the Complaint.

24. Koch Foods denies the allegations contained in Paragraph 24 of the Complaint.

25. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 25 of the Complaint.

26. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint regarding the conversations

between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 26 of the Complaint.

27. Koch Foods denies the allegations contained in Paragraph 27 of the Complaint.

28. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 28 of the Complaint.

29. Koch Foods admits that in September and October 2007, Plaintiff reported certain alleged actions by Ickom, and Koch Foods fully investigated the report. Koch Foods denies the remaining allegations contained in Paragraph 29 of the Complaint.

30. Koch Foods admits that Plaintiff was offered a position in the box room. Koch Foods denies the remaining allegations contained in Paragraph 30 of the Complaint.

31. Koch Foods admits that it does not require any employee to present proof of citizenship or lawful immigration status to make a personnel complaint. Koch Foods denies the remaining allegations contained in Paragraph 31 of the Complaint.

32. Koch Foods' policy does not allow its managers to question the validity of any citizenship documentation without a proper basis. Koch Foods denies the remaining allegations contained in Paragraph 32 of the Complaint.

33. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 33 of the Complaint.

34. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 34 of the Complaint.

35. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 35 of the Complaint.

36. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint regarding the conversations between and the actions/inactions of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 36 of the Complaint.

37. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint regarding the subjective feelings of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 37 of the Complaint.

38. Koch Foods lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint regarding the subjective feelings of third parties; therefore, those allegations are denied. Koch Foods denies the remaining allegations contained in Paragraph 38 of the Complaint.

39. Koch Foods admits that, at some point, Plaintiff applied for employment at its processing plant in Forest, Mississippi and that her application was denied. Koch Foods denies the remaining allegations contained in Paragraph 39 of the Complaint.

40. Koch Foods denies the allegations contained in Paragraph 40 of the Complaint.

41. Koch Foods denies the allegations contained in Paragraph 41 of the Complaint.

CLAIMS FOR RELIEF

Section 1981, 42 U.S.C. § 1981
(Against Defendants Koch Foods and Jesse Ickom)

42. Koch Foods admits that Plaintiff seeks to pursue claims under 42 U.S.C. § 1981 against the Defendants. Koch Foods denies the remaining allegations contained in Paragraph 42 of the Complaint.

43. Koch Foods readopts and re-alleges its answers to Paragraphs 4 – 41 as if fully set forth herein.

44. Koch Foods denies the allegations contained in Paragraph 44 of the Complaint.

45. Koch Foods denies the allegations contained in Paragraph 45 of the Complaint.

46. Koch Foods denies the allegations contained in Paragraph 46 of the Complaint, and Koch Foods readopts and re-alleges its answers to Paragraphs 4 – 41 as if fully set forth herein.

47. Koch Foods denies the allegations contained in Paragraph 47 of the Complaint.

48. Koch Foods denies the allegations contained in Paragraph 48 of the Complaint, and Koch Foods readopts and re-alleges its answers to Paragraphs 4 – 41 as if fully set forth herein.

49. Koch Foods denies the allegations contained in Paragraph 49 of the Complaint, and Koch Foods readopts and re-alleges its answers to Paragraphs 4 – 41 as if fully set forth herein.

50. Koch Foods denies the allegations contained in Paragraph 50 of the Complaint.

51. Koch Foods denies the allegations contained in Paragraph 51 of the Complaint.

52. Koch Foods denies the allegations contained in Paragraph 52 of the Complaint.

53. Koch Foods denies the allegations contained in Paragraph 53 of the Complaint.

54. Koch Foods denies the allegations contained in Paragraph 54 of the Complaint, and Koch Foods readopts and re-alleges its answers to Paragraphs 4 – 41 as if fully set forth herein.

55. Koch Foods denies the allegations contained in Paragraph 55 of the Complaint and denies that Plaintiff is entitled to any relief whatsoever.

Negligence Under Mississippi Law
(Against Defendant Koch Foods)

56. Koch Foods admits that Cazorla seeks to pursue a negligence claim under Mississippi law against the Defendants. Koch Foods denies the remaining allegations contained in Paragraph 56 of the Complaint.

57. Koch Foods readopts and re-alleges its answers to Paragraphs 4 – 41 as if fully set forth herein.

58. Koch Foods denies the allegations contained in Paragraph 58 of the Complaint.

59. Koch Foods denies the allegations contained in Paragraph 59 of the Complaint.

60. Koch Foods denies the allegations contained in Paragraph 60 of the Complaint, and Koch Foods readopts and re-alleges its answers to Paragraphs 4 – 41 as if fully set forth herein.

61. Koch Foods denies the allegations contained in Paragraph 61 of the Complaint.

62. Koch Foods denies the allegations contained in Paragraph 62 of the Complaint and denies that Plaintiff is entitled to any relief whatsoever.

PRAYER FOR RELIEF

Koch Foods denies the allegations contained in the unnumbered Paragraph, beginning "WHEREFORE," and all sub-parts thereto, and Koch Foods denies that Plaintiff is entitled to any relief whatsoever.

WHEREFORE, PREMISES CONSIDERED, Defendant, Koch Foods of Mississippi, LLC, prays the Court dismiss Plaintiff's Complaint with prejudice, with cost of the action accessed against Plaintiff. Defendant, Koch Foods of Mississippi, LLC, further requests any additional relief the Court deem warranted by the circumstances.

This the 28th day of June, 2010.

Respectfully submitted,

KOCH FOODS OF MISSISSIPPI, LLC

By its Attorneys,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

/s/ Jennifer G. Hall
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Answer and Affirmative Defenses with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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This the 28th day of June, 2010.

/s/ Jennifer G. Hall
JENNIFER G. HALL